

DEPARTMENT OF STATE REVENUE
SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 00-0389
Adjusted Gross Income Tax
For Tax Years 1996 through 1998

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ISSUES

I. Adjusted Gross Income—Throwback sales

Authority: 45 IAC 3.1-1-64

Taxpayer protests imposition of adjusted gross income tax on out of state throwback sales.

II. Tax Administration—Negligence Penalty

Authority: 45 IAC 15-11-2

Taxpayer protests the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

Taxpayer manufactures mattresses with operations in several states. The Department conducted an audit for the tax years 1996 through 1998, and issued proposed assessments for those years. Taxpayer protested those assessments. The Department sustained taxpayer's protest in part and denied the protest in part. Taxpayer asked for and was granted a rehearing. Further facts will be supplied as needed.

I. Adjusted Gross Income—Throwback sales

DISCUSSION

Taxpayer manufactures mattresses and has operations in several states. The Department conducted an audit for the tax years 1996 through 1998. As a result of this audit, the Department issued proposed assessments for adjusted gross income tax. One of the adjustments the Department made was to impose Indiana adjusted gross income tax on 02-20000389.SLOF

throwback sales taxpayer had in Arizona, Kansas and Minnesota. Taxpayer protested these adjustments. The Department sustained the protest for Arizona in 1997, Kansas in 1997 and 1998, and Minnesota for 1998, and denied the protest for Arizona in 1996 and 1998, Kansas in 1996, and Minnesota in 1996 and 1997.

The relevant regulation is 45 IAC 3.1-1-64, which states in relevant part:

Taxpayers are not subject to throwback on sales into states in which they are taxable under this regulation [45 IAC 3.1-1-64].

Taxpayer requested a rehearing to clarify its position and to submit additional documentation in support of its protest. In the rehearing, taxpayer explained that it had an employee permanently based at its Arizona plant for all three years in question. Also, taxpayer explained that it had payroll in Kansas in 1996. Documentation was provided to support these explanations.

When combined with the information explained in the original Letter of Findings, taxpayer was taxable under 45 IAC 3.1-1-64 in: Arizona for 1996, 1997 and 1998; Kansas for 1996, 1997 and 1998; and Minnesota for 1998, and therefore was not subject to throwback on sales into those states for those years. Taxpayer's protest is sustained for Arizona for 1996, 1997 and 1998. Taxpayer's protest is sustained for Kansas for 1996, 1997 and 1998. Taxpayer's protest is sustained for Minnesota for 1998 and denied for Minnesota for 1996 and 1997.

FINDING

Taxpayer's protest is sustained in part and denied in part.

II. Tax Administration—Negligence Penalty

DISCUSSION

Taxpayer protests the imposition of a ten percent (10%) negligence penalty. Taxpayer did not protest the negligence penalty in the original Letter of Findings and the Department agreed to address the issue here for the first time. Taxpayer requests that all penalties be waived as it has acted in good faith at all times, and any remaining assessments are not the result of any willful disregard of Indiana's tax laws, or negligence on the part of taxpayer. Negligence is defined by 45 IAC 15-11-2(b), which states:

“Negligence” on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by

the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) states in part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-2.1] if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

While taxpayer's protest was substantially sustained on Issue I (regarding throwback sales), the protest has not been completely sustained. Also, there were additional adjustments made as a result of the audit, which taxpayer did not protest. Therefore, the negligence penalty is appropriate for the remaining assessments.

FINDING

Taxpayer's protest is denied.

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